

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

ISU, Inc., d/b/a Triple C Durable Medical Equipment Supply,
(PTAN: 5407420001),

Petitioner,

v.

Centers for Medicare & Medicaid Services

Docket No. C-14-431

Decision No. CR3262

Date: June 11, 2014

DECISION

Petitioner, ISU, Inc., d/b/a Triple C Durable Medical Equipment Supply, is a supplier of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS), located in Las Vegas, Nevada, that, until recently, participated in the Medicare program. The Centers for Medicare & Medicaid Services (CMS) has revoked its Medicare supplier number, and Petitioner appeals. Both parties now move for summary judgment.

Neither party lists any witness, so an in-person hearing would serve no purpose. *See* Acknowledgment and Prehearing Order at 6 (¶10). This matter may therefore be decided on the written record, without considering whether the standards for summary judgment are satisfied.

Because the supplier lost its accreditation, CMS properly revoked its supplier number.

Background

Until its Medicare provider number was revoked, effective September 27, 2013, Petitioner participated in the Medicare program as a supplier of DMEPOS. *See* 42 C.F.R.

§ 424.57. In a letter dated August 28, 2013, the Medicare contractor, National Supplier Clearinghouse (a division of Palmetto GBA), notified Petitioner that its Medicare supplier number would be revoked, effective 30 days from the letter's date, pursuant to 42 C.F.R. §§ 405.800; 424.57(e); 424.535(a)(1); and 424.535(g). According to the letter, Petitioner did not comply with two supplier standards: 42 C.F.R. § 424.57(c)(13), because the company did not respond to complaints about equipment provided to Medicare beneficiaries; and 42 C.F.R. § 424.57(c)(22), because the supplier's accreditation expired on May 24, 2013. CMS Ex. 1.

Petitioner sought reconsideration. In a reconsidered determination dated October 25, 2013, a Medicare hearing officer affirmed the revocation of Petitioner's supplier number. CMS Ex. 3. Petitioner now appeals that determination pursuant to 42 C.F.R. § 424.545.

With its brief, CMS submits four exhibits (CMS Exs. 1-4). Petitioner submits a brief (P. Br.), and three exhibits (P. Exs. 1-3). In the absence of any objection, I admit into evidence CMS Exs. 1-4 and P. Exs. 1-3.

Discussion

CMS properly revoked the supplier's billing number, because the supplier was no longer accredited, as required by the Medicare statute and regulations.¹

Requirements for a DMEPOS supplier's Medicare participation. To receive Medicare payments for items furnished to a Medicare-eligible beneficiary, a supplier of medical equipment and supplies must have a supplier number issued by the Secretary of Health and Human Services. Social Security Act (Act) § 1834(j)(1)(A).

To obtain and retain a supplier number, a Medicare supplier must demonstrate that it is accredited by an approved accreditation organization. Act § 1834(a)(20)(F)(i). It must also meet the standards set forth in 42 C.F.R. § 424.57(c). CMS may revoke its billing privileges if it fails to do so. 42 C.F.R. § 424.57(c)(1) and (d); 42 C.F.R. § 424.535(a)(1). Among those standards, all suppliers of DMEPOS and other items and services must be accredited by a CMS-approved organization. 42 C.F.R. § 424.57(c)(22).

Here, the parties agree that Petitioner ISU was accredited by the Healthcare Quality Association of Accreditation until May 24, 2013, when its accreditation expired. CMS Br. at 2, 5; CMS Ex. 2; P. Br. at 2. Petitioner concedes that its accreditation expired, but claims that it was "half-way towards completing the accreditation renewal" when, in May 2013, it learned that it had not been awarded a contract to provide products to Medicare beneficiaries as part of the DMEPOS Competitive Bidding Program. P. Br. at 4; P. Ex. 1.

¹ I make this one finding of fact/conclusion of law.

For reasons that Petitioner does not explain, this caused it to lose its accreditation, although it was eventually re-accredited, effective December 13, 2013. P. Ex. 2; CMS Ex. 4.

I agree with CMS, that the reasons Petitioner allowed its accreditation to lapse are irrelevant. The statute and regulation make no exceptions for lapses in accreditation. Further, that the supplier was eventually re-accredited does not preclude CMS from revoking its billing privileges based on the loss of its accreditation. *See Pepper Hill Nursing & Rehab. Ctr., LLC*, DAB No. 2395 at 5-6 (2011) (finding retroactive compliance insufficient to prevent revocation of a supplier's billing privileges).

Conclusion

Because the supplier was not accredited, as required by the Medicare statute and regulations, CMS properly revoked its billing privileges.

/s/

Carolyn Cozad Hughes
Administrative Law Judge